



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,098	09/26/2001	Richard C. Johnson	021756-087500US	3958
51206 7590 10/01/2010 TOWNSEND AND TOWNSEND AND CREW LLP/ORACLE TWO EMBARCADERO CENTER 8TH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER				
BADIL, BEHRANG				
ART UNIT		PAPER NUMBER		
3694				
MAIL DATE		DELIVERY MODE		
10/01/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/965,098

**Applicant(s)**

JOHNSON, RICHARD C.

**Examiner**

BEHRANG BADII

**Art Unit**

3694

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6, 7, 11-14, 16-21, 23 and 24 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

- 6) ☒ Claim(s) 1-4, 6, 7, 11-14, 16-21, 23 & 24 is/are rejected.

- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE-C/3)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-4, 6, 7, 11-14, 16-21, 23 & 24 have been examined.

P = paragraph, e.g. p5 = paragraph 5.

### ***Response to Arguments***

Applicant's arguments filed 8/2/10 have been fully considered but they are not persuasive. Das and Boarman disclose changing the asking price to enable bidding above a floor established at the current asking price as discussed below. Applicant's background, Das and Boarman disclose increasing the asking price as discussed below. This still seems to be the combination of a Dutch and English auction both of which are well known in the art.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 6, 7, 11-14, 16-21, 23 & 24 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitations "receiving, at the one or more computer systems, information associated with a first bid offered by a first bidder that satisfies the then current asking price;

determining, with the one or more processors associated with the one or more computer systems, whether the first bid should be utilized as a second seed price for the auction setting the current asking price to enable bidding on the item above a floor established at the current asking price" are unclear. Is the applicant saying after the bid

price meets the asking price, another auction is started? In an auction or any transaction, when the bid price meets/matches the ask price the transaction is over.

The limitations "posting an increase in the current asking price to the network-based auction location with the one or more processors associated with the one or more computer systems to enable bidding on the item above the floor established at the current asking price, and

periodically increasing and posting, with the one or more processors associated with the one or more computer systems, the current asking price to the network-based auction location while bids from the auction participants are made that satisfy the current asking price" are unclear. Here, the asking price seems to be increased every time a bid matches the asking price. Again, when the bid and the ask match, the transaction is over. However here, when there is a match between a bid and an ask, the ask price is increased. Moreover, in an auction, the increase in price is determined by the competing bids, but in this auction, the price is increased NOT by competing bids, but when the bid price meets the asking price. This is unclear.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7, 11-14, 16-21, 23 & 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's background and further in view of Boarman et al, USP 6,609,112 and Das et al, USPAP 2002/0147675.

As per claims 1, 11 and 18, the applicant's background discloses a method/computer system/machine readable medium of conducting an auction for an item, comprising the steps of:

- receiving, at one or more computer systems, a first seed price for the auction setting a current asking price for the item;

- storing, in a database communicatively coupled to the one or more computer systems, the current asking price;

- posting, with one or more processors associated with the one or more computer systems, the current asking price to the network-based auction location based on the first seed price to enable bidding on the item below a ceiling established at the current asking price;

- periodically decreasing and posting, with the one or more processors associated with the one or more computer systems, the current asking price to the network-based auction location while no bids from the auction participants are made that satisfy the current asking price;

- receiving, at the one or more computer systems, information associated with a first bid offered by a first bidder that satisfies the then current asking price;

- prior to awarding the item to any of the auction participants,

based on a determination that the first bid should be utilized as a second seed price for the auction, posting an increase in the current asking price to the network-based auction location with the one or more processors associated with the one or more computer systems to enable bidding on the item above the floor established at the current asking price, and

periodically increasing and posting, with the one or more processors associated with the one or more computer systems, the current asking price to the network-based auction location while bids from the auction participants are made that satisfy the current asking price; and

awarding, with the one or more processors associated with the one or more computer systems, the item to a highest bidder among the first bidder and [[the]] at least one additional bidder.

The above limitations are the Dutch and English auctions which are disclosed by the applicant's background and are well known in the art.

The applicant's background might not explicitly disclose determining, with the one or more processors associated with the one or more computer systems, whether the first bid should be utilized as a second seed price for the auction setting the current asking price to enable bidding on the item above a floor established at the current asking price. Boarman and/or Das disclose the English and Dutch auction as described above. Further, Boarman and/or Das disclose determining, with the one or more processors associated with the one or more computer systems, whether the first bid should be utilized as a second seed price for the auction setting the current asking price

to enable bidding on the item above a floor established at the current asking price (Das et al.: p 53-54, 65 & 77) (Boarman: col.4, 29-67; col.5, 1-61; fig 3a; abstract). More specifically, p54 of Das states: "an important class of continuous **double auctions**, in which the auctioneer maintains **bid** and ask queues such that, when the current best **bid** is exceeded or the current best ask is undercut, they are not removed, but simply demoted to the second position in their respective queue, with the new **bid** or ask assuming the first position. **Bids or asks that have been pushed down to lower positions in their queues by a succession of higher bids or lower asks** may later rise back to the top of their queues when the **bids** or asks above them are removed through trade, withdrawal, expiration, or possibly other circumstances." Both references disclose auctions that are composed of more than one phase.

It would have been obvious to modify the applicant's background to include determining, with the one or more processors associated with the one or more computer systems, whether the first bid should be utilized as a second seed price for the auction setting the current asking price to enable bidding on the item above a floor established at the current asking price as that taught by Boarman in order to conduct proxy bidding within the context of Dutch auctions (col.1, 60-63).

As per claims 2, 12 and 19, the applicant's background further discloses setting a reserve price for the item, the reserve price being that price below which the item will not be sold, and stopping the auction if the periodic decreasing step decreases the current asking price to a level that is at or below the reserve price and no bid is received at the reserve price.

As per claims 3, 13 and 20, the applicant's background further discloses wherein the decreasing step is carried out at a predetermined regular time interval.

As per claims 4, 14 and 21, the applicant's background further discloses wherein the posting step includes a step of causing the current asking price to be displayed on at least one remote computing device coupled to a network.

As per claims 6, 16 and 23, the applicant's background further discloses accepting each one of the one or more increasingly higher successive bids if timely received.

As per claims 7, 17 and 24, the applicant's background further discloses wherein the item includes at least one of a contract, goods, a service, real estate and a legal right.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Behrang Badii whose telephone number is 571-272-6879. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this action should be mailed to:**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**or faxed to (571)273-8300**

Hand delivered responses should be brought to

United States Patent and Trademark Office  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3600 Customer Service Office whose telephone number is **(571) 272-3600**.

/Behrang Badii/  
Primary Examiner  
Art Unit 3694